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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,630

06/24/2003

Joseph B. Agusta

P5087C1

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24739 7590 01/29/2009  
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EXAMINER

NGUYEN, QUYNH H

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

01/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/603,630	<b>Applicant(s)</b> AGUSTA, JOSEPH B.	
	<b>Examiner</b> QUYNH H. NGUYEN	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 10/23/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29,31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29,31 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Applicant's amendment filed 10/23/08 has been entered. Claims 29, 31, and 33 have been amended. Claims 30, 32, and 34 have been cancelled. No claims have been added. Claims 29, 31, and 33 are still pending in this application, with claims 29, 31, and 33 being independent.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 29 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1876)), and recent Federal Circuit decisions (*In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008)) indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim recites a series of steps or acts to be performed, the claim neither transforms underlying subject matter

nor is positively tied to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. The Applicant has provided no explicit and deliberate definitions of responding, building, determining, and selecting to limit the steps of assigning tasks to agents, and the claim language itself is sufficiently broad to read on a supervisor being shown a list of an incoming call to be assigned, mentally thinking skills of his/her available agents, determining which available agent qualified to service a task and select an agent with least qualified, and ask that agent to answer the call.

Claim 33 is rejected under 35 U.S.C. 101 because the claimed invention falls outside of the statutory categories. Claim 31 recites "Computer program code..." and computer program code is software per se is neither a "product" nor a "process" in a statutory sense. The aforementioned intrinsic evidence in the specification suggests that the full scope of the claimed method encompasses nothing more than software and is therefore non-statutory for that reason. Furthermore, a practical application exists if the *result* of the claimed invention is "useful, concrete and tangible". Thus, computer program code would not provide a tangible result.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is drawn to an apparatus comprises various means. Corresponding structure, material or acts are not clearly described in the specification and one skill in

the art could not identify the structure, material or acts from the description, hence the specification provide evidence that the 112 second paragraph is not satisfied.

***Claim Rejections - 35 USC § 103***

6. Claims 29, 31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villena et al. (U.S. Patent. 6,832,203).

Regarding claims 29 and 31, Villena et al. discloses a method of assigning tasks to agents in a service center based on agent skills required to service individual tasks (col. 2, lines 18-19), comprising:

(a) in response to a task to be service, determining a skill set that would be best suited for responding to the task (col. 2, lines 38-53);

(b) building a skill table of all available agents having skills at least partially matching the determination of skills needed to service the task (Fig. 2; col. 3, lines 40-45 and lines 62-65; col. 4, lines 40-44), wherein the skill table is organized by skill sets that include all skills possessed by the agents (Fig. 2; col. 3, line 49 through col. 4, line 51);

© determining from the skill table of available agents all agents qualified to service the task (col. 3, lines 25-28; col. 4, lines 46-48);

(d) selecting an agent least qualified to service the task from the agents determined to be qualified to service the task (col. 4, lines 46-51). Selecting an agent least qualified to service the task from agents determined to be qualified to service the task is well known in Automatic Call Distributing Center and the advantage of selecting

an agent with a minimum qualification among the agents determined to be qualified to service the task is also well known. For example, if agent A1 speaks English and Spanish, agent A2 speaks only English, a task needs to be serviced is English then one would select agent A2 with a minimum qualification level to service the task and reserving agent A1 for next task that needs a Spanish speaking agent.

Villena does not explicitly teach building a skill table of all available agents having skills at least partially matching the determination of skills needed to service the task in step (a). However, Villena teaches building a table involves the skill vector for a particular service types (Fig. 2; col. 3, lines 40-45) and if the agent vector does not have a particular specified minimum proficiency for each particular skill required by a service, the agent will not be assigned contacts that require that service (col. 4, lines 40-44). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the skills required to service the task are determined, an agent table is built including agents having skills required to service the task. Again, even if Villena does not have steps in the same order as the instant application, to have steps in different order and still performing the same functions and without departing from the teachings of the prior art do not rise the patent application to the level of patentability.

Claim 33 is rejected for the same reasons as discussed above with respect to claim 1. Furthermore, Sassin et al. teach computer program code embodied in a storage medium for controlling a computer to assign tasks to agents (col. 1, lines 24-26 - where Villena discussed call center architecture and logistics for providing best

*possible service for all types of contacts, for example computer storage medium, program code, etc.).*

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 29, 31, and 33 have been fully considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH H. NGUYEN whose telephone number is 571-272-7489. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Quynh H Nguyen/

Primary Examiner, Art Unit 2614